

State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1764/T

MGG:wlj:jfz

today

~~now~~  
O-N

2005 BILL

~~prohibitions against smoking in restaurants,  
bowling centers, and places of employ-  
ment,~~

Regen

1 AN ACT *to repeal* 101.123 (1) (c), 101.123 (3) (b), 101.123 (3) (f), 101.123 (4) (a)  
2 1. and 101.123 (4) (a) 3.; *to renumber* 101.123 (1) (a); *to renumber and*  
3 *amend* 101.123 (4) (a) 2., 101.123 (4) (am) 1. and 101.123 (4) (am) 2.; *to*  
4 *consolidate, renumber and amend* 101.123 (4) (b) and (bm); *to amend*  
5 101.123 (2) (am) 2., 101.123 (3) (intro.), 101.123 (3) (d), 101.123 (4) (c) and  
6 101.123 (4) (d); *to repeal and recreate* 101.123 (2) (a) 5.; and *to create*  
7 101.123 (1) (ay) and 101.123 (4) (aw) of the statutes; *relating to:* designated  
8 smoking areas in places where smoking is generally prohibited, and certain  
9 areas that are excepted from the prohibition against indoor smoking.

INS  
REL

**Analysis by the Legislative Reference Bureau**

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated a smoking area. This bill limits the areas where any smoking areas may be designated to hospitals where the primary purpose is for treatment of mental illness, alcoholism, or drug abuse; mental health institutions; centers for the developmentally disabled; prisons; and jails. The locations where smoking areas may no longer be designated under the bill include the following:

**BILL**

1. Public conveyances such as mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Inpatient health care facilities such as community-based residential facilities and licensed nursing homes.
4. Movie theaters.
5. Offices and other places of employment, as described below.
6. Restaurants that have seating capacities of more than 50 persons, except as described below.
7. Retail establishments other than bars and bowling centers.
8. Public waiting rooms.
9. County, city, village, state, and town buildings.

Current law provides exceptions from the prohibition against smoking for rooms in which the main occupants are smokers and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions. This bill also expands the concept of "offices" under current law to include indoor workplaces. The bill defines an "indoor workplace" to be any indoor location where a person performs a work-related duty, except for a personal residence.

Current law ~~also allows~~ <sup>STET</sup> smoking in any restaurant holding an intoxicating liquor license or beer license issued by a municipality if the sale of alcoholic beverages subject to the license accounts for more than 50 percent of the restaurant's receipts. The bill increases this percentage to 75 percent.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

SECTION 2. 101.123 (1) (ay) of the statutes is created to read:

101.123 (1) (ay) "Indoor workplace" means any indoor location where a person performs a work-related duty in the course of a profession, trade, occupation, or process of manufacture, except a personal residence.

SECTION 3. 101.123 (1) (c) of the statutes is repealed.

SECTION 4. 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

101.123 (2) (a) 5. <sup>places of employment</sup> ~~Indoor workplaces~~

SECTION 5. 101.123 (2) (am) 2. of the statutes is amended to read:

**BILL**

1       101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient  
2       of a hospital or unit of a hospital that has as its primary purpose the care and  
3       treatment of mental illness, alcoholism or drug abuse and who has the written  
4       permission of a physician may smoke in a room that is designated as a smoking area  
5       under sub. (4) (a) 2.

6       **SECTION 6.** 101.123 (3) (intro.) of the statutes is amended to read:

7       101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does  
8       not apply to any of the following places:

9       **SECTION 7.** 101.123 (3) (b) of the statutes is repealed.

10       **SECTION 8.** 101.123 (3) (d) of the statutes is amended to read:

11       101.123 (3) (d) Restaurants holding a “Class B” intoxicating liquor or Class “B”  
12       fermented malt beverage license if the sale of intoxicating liquors or fermented malt  
13       beverages or both accounts for more than 50% 75% of the restaurant’s receipts.

14       **SECTION 9.** 101.123 (3) (f) of the statutes is repealed.

15       **SECTION 10.** 101.123 (4) (a) 1. of the statutes is repealed.

16       **SECTION 11.** 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and  
17       amended to read:

18       101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent  
19       may not designate ~~an entire building as a smoking area or designate any smoking~~  
20       ~~areas in the state capitol building, in the immediate vicinity of the state capitol, in~~  
21       ~~a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional~~  
22       ~~facility, in a motor bus, hospital, or physician’s office or on the premises, indoors or~~  
23       ~~outdoors, of a day care center when children who are receiving day care services are~~  
24       ~~present, in a residence hall or dormitory that is owned or operated by the Board of~~  
25       ~~Regents of the University of Wisconsin System or in any location that is 25 feet or~~

**BILL****SECTION 11**

1 ~~less from such a residence hall or dormitory, except that in a hospital or a unit of a~~  
2 ~~hospital that has as its primary purpose the care and treatment of mental illness,~~  
3 ~~alcoholism, or drug abuse a person in charge or his or her agent may designate a~~  
4 ~~portion of one or more enclosed rooms with outside ventilation as smoking areas for~~  
5 ~~the use of adult patients who have the written permission of a physician. Subject to~~  
6 ~~this subdivision and sub. (3) (b), a person in charge or his or her agent may not~~  
7 ~~designate an entire room as a smoking area for the purpose of allowing smoking as~~  
8 ~~specified in sub. (2) (am) 2.~~

9 **SECTION 12.** 101.123 (4) (a) 3. of the statutes is repealed.

10 **SECTION 13.** 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (as)  
11 and amended to read:

12 101.123 (4) (as) State institutions. The secretary of health and family services  
13 or his or her designee agent may designate areas where smoking is permitted in a  
14 state institution other than a prison, ~~unless a fire marshal, law or resolution~~  
15 ~~prohibits smoking in the area.~~ The secretary of corrections or his or her designee  
16 agent may designate areas where smoking is permitted in a prison, ~~unless a fire~~  
17 ~~marshal, law or resolution prohibits smoking in the area.~~ Either secretary or his or  
18 her designee agent may designate an entire room as a smoking area in a state  
19 institution administered by the secretary's department.

20 **SECTION 14.** 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar)  
21 and amended to read:

22 101.123 (4) (ar) Jails; lockup facilities. A person in charge of a jail or lockup  
23 facility, or his or her agent, may designate areas where smoking is permitted in the  
24 jail or lockup facility, ~~unless a fire marshal, law or resolution prohibits smoking in~~

**BILL**

1 the area. The person in charge or his or her agent may designate an entire room in  
2 the jail or lockup facility as a smoking area.

3 **SECTION 15.** 101.123 (4) (aw) of the statutes is created to read:

4 101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking  
5 is permitted if a fire marshal, law, or resolution prohibits smoking that area.

6 **SECTION 16.** 101.123 (4) (b) and (bm) of the statutes are consolidated,  
7 renumbered 101.123 (4) (b) and amended to read:

8 101.123 (4) (b) Posting. The person in charge authorized to designate a  
9 smoking area under par. (a), (ar), or (as), or his or her agent, shall post notice of the  
10 designation of a smoking area in or near the area designated. If an entire room is  
11 designated a smoking area, the person in charge so authorized, or his or her agent,  
12 shall post notice of the designation conspicuously on or near all entrances to the room  
13 normally used by the public. ~~This paragraph does not apply to a place described in~~  
14 ~~par. (bm). (bm) The person in charge of a state institution, jail or lockup facility or~~  
15 ~~his or her agent, shall post notice of the designation of a smoking area under par. (am)~~  
16 ~~in or near the area designated. If an entire room is designated a smoking area, the~~  
17 ~~person in charge or his or her agent shall post notice of the designation conspicuously~~  
18 ~~on or near all normally used entrances to the room. If an entire building in a prison,~~  
19 ~~jail, or lockup facility is designated a smoking area, the person in charge so~~  
20 authorized, or his or her agent, shall post notice of the designation on or near all  
21 normally used entrances to the building, but need not post notice of the designation  
22 on or near entrances to rooms within the building.

23 **SECTION 17.** 101.123 (4) (c) of the statutes is amended to read:

24 101.123 (4) (c) Barriers; ventilation. The person in charge authorized to  
25 designate a smoking area under par. (a), (ar), or (as), or his or her agent, shall utilize,

**BILL**

1 if possible, existing physical barriers and ventilation systems when designating  
2 smoking areas. This paragraph requires no new construction of physical barriers or  
3 ventilation systems in any building.

4 **SECTION 18.** 101.123 (4) (d) of the statutes is amended to read:

5 101.123 (4) (d) Where posting required. This section requires the posting of  
6 signs only in areas where smoking is permitted.

7 **SECTION 19. Effective date.**

8 (1) This act takes effect on the first day of the 7th month beginning after  
9 publication.

10 (END)

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1764/2ins  
MGG:.....

**Insert REL**

**No II** indoor places where smoking is prohibited, designating smoking areas in indoor places where smoking is generally prohibited, and smoking outside the state capitol building.

**Insert ANL A**

**No II** any place of employment. The bill defines "a place of employment" to be any indoor area that employees normally frequent during the course of employment such as <sup>a</sup>work area, <sup>a</sup>employee lounge, <sup>a</sup>restroom, <sup>a</sup>conference room, <sup>a</sup>meeting room, <sup>a</sup>classroom, or <sup>a</sup>hallway. The definition excludes any private residence unless it is an adult day care center.

**Insert ANL B**

Current law also allows smoking in any bowling center and any restaurant that has seating for a maximum of 50 persons. Under the bill, all restaurants and bowling centers are covered by the prohibition against smoking.

<sup>is</sup> Current law prohibits any person from smoking at an outside location that <sup>a</sup>within the immediate vicinity of the state capitol building. Current law defines "immediate vicinity" for <sup>a</sup>the purpose to be 6 feet. <sup>this</sup> <sup>SP</sup> <sup>The</sup> This bill changes this distance to 25 feet.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

**Insert 2-1**

**6** **SECTION 101.123 (1) (ac) of the statutes is created to read:**

101.123 (1) (ac) "Adult day care center" means a facility in which services are provided for part of a day in a group setting to adults who need an enriched health-supportive or social experience and who may need assistance with activities of daily living, supervision, or protection.

**Insert 2-5**

**SECTION 101.123 (1) (ar) of the statutes is amended to read:**

101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area directly adjacent to the state capitol building, as determined by rule of the department of administration. "Immediate vicinity of the state capitol" does not

1 include any location that is more than ~~one fathom~~ 25 feet from the state capitol  
2 building.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

3 **Insert 2-6**

4 **SECTION 3.** 101.123 (1) (d) of the statutes is amended to read:

5 101.123 (1) (d) "Person in charge" means the person who ultimately controls,  
6 governs or directs the activities ~~aboard a public conveyance or~~ within a place where  
7 smoking is regulated under this section, regardless of the person's status as owner  
8 or lessee.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

9 **SECTION 4.** 101.123 (1) (dj) of the statutes is created to read:

10 101.123 (1) (dj) "Place of employment" means any indoor area that employees  
11 normally frequent during the course of employment, including a work area,  
12 <sup>an</sup> employee lounge, <sup>a</sup> restroom, <sup>a</sup> conference room, <sup>a</sup> meeting room, <sup>a</sup> classroom, <sup>a</sup> hallway,  
13 <sup>a</sup> vehicle, and or a cafeteria that is provided by the employer. "Place of employment"  
14 does not include a private residence unless it is used as an adult day care <sup>Center</sup> ~~facility~~ <sup>Facility</sup>✓

15 **SECTION 5.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and  
16 amended to read:

17 101.123 (1) (cm) <sup>plain space</sup> "Public conveyance" <sup>plain</sup> "Passenger vehicle" means a mass transit  
18 vehicles vehicle as defined by in s. 340.01 (28m), <sup>plain</sup> a motor bus as defined in s. 340.01  
19 <sup>plain</sup> (31), and a school buses bus as defined by in s. 340.01 (56). <sup>plain</sup>

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

20 **SECTION 6.** 101.123 (1) (f) of the statutes is amended to read:

21 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)  
22 ~~with a seating capacity of more than 50 persons.~~

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.



1           **SECTION 7.** 101.123 (1) (g) of the statutes is amended to read:

2           101.123 (1) (g) "Retail establishment" means any store or shop in which retail  
3           sales is the principal business conducted, except a tavern operating under a "Class  
4           B" intoxicating liquor license or Class "B" fermented malt beverages license, and  
5           except bowling centers.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

6           **SECTION 8.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

7           101.123 (2) (a) 1. Passenger vehicles.

8           **Insert 2-7**

9           **SECTION 9.** 101.123 (2) (am) 1. of the statutes is amended to read:

10           101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided  
11           in subd. 2., no person may smoke in a motor bus, in a hospital or in a physician's office.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1764/2dn

MGG:.....

WLj

D-Note

(a) and

1. In the definition of "place of employment" I did not include day care centers or health care facilities. They did not mesh with the provisions in s. 101.123 (2)(bm) and 101.123 (2)(a) because smoking is prohibited in these places regardless of whether they meet the definition of "place of employment". However, you should review the definitions of "day care center" and "inpatient health care center" in s. 101.123 to see if you want to change those definitions. For example, the definition of "day care center" only includes those centers with 4 or more children and a license day care provider. If you wish to cover health care or day care operations that are not covered under the bill and current law, please let me know.

2. Under current law, no smoking is allowed in a "motor bus" but a smoking area may be designated in a "public conveyance". An example of a "motor bus" that would not be a "public conveyance" would be a church bus or other bus which is not used by the general public. Under this bill, smoking is totally prohibited in both "public conveyances" and "motor buses", as defined for purposes of s. 101.123. I, therefore, merged these two definitions and have changed the defined term to passenger vehicle.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1764/2dn  
MGG:wlj:pg

March 30, 2005

1. In the definition of "place of employment" I did not include day care centers or health care facilities. They did not mesh with the provisions in s. 101.123 (2) (a) and (bm) because smoking is prohibited in these places regardless of whether they meet the definition of "place of employment." However, you should review the definitions of "day care center" and "inpatient health care center" in s. 101.123 to see if you want to change those definitions. For example, the definition of "day care center" includes only those centers with four or more children and a licensed day care provider. If you wish to cover health care or day care operations that are not covered under the bill and current law, please let me know.

2. Under current law, no smoking is allowed in a "motor bus" but a smoking area may be designated in a "public conveyance." An example of a "motor bus" that would not be a "public conveyance" would be a church bus or other bus that is not used by the general public. Under this bill, smoking is totally prohibited in both "public conveyances" and "motor buses," as defined for purposes of s. 101.123. I, therefore, merged these two definitions and have changed the defined term to passenger vehicle.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

**Gibson-Glass, Mary**

**From:** Gottlieb, Mark  
**Sent:** Wednesday, March 30, 2005 2:04  
**To:** Gibson-Glass, Mary  
**Cc:** Paulson, Darcy  
**Subject:** LRB 1764-2

Mary –

1. ✓ Page 7, line 2 – I think you need the word “in” before “that area.”
2. ✓ What happens to 101.123(4) am(3)? You renumbered 4(am) 1 to 4 (as) and 4 (am) 2 to 4(ar). Don't you have to renumber (4) am(3) to something like 4 (at)?
3. ✓ The purpose of this draft is to exempt restaurants that get over 75% of sales from liquor, and also taverns. Therefore, I think we need a 101.123 (3) (e) that says “*taverns operating under a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license*”.

I believe that with the above changes, this draft will be correct to my original intentions.

*taverns is not in definition of restaurants*  
~~However, I would have preferred to have 2 drafts ready for introduction. One would be the one we have been working on, and the second would NOT include the exemptions for restaurants and taverns.~~

~~So, I would like to have 3 be the draft as discussed originally, and then 74 be a draft that would not include the restaurant and tavern exemptions, since I am not sure which version I intend to introduce.~~

Please call Darcy in my office if you have any questions.

Mark Gottlieb  
 State Representative  
 60th Assembly District  
[www.legis.state.wi.us/assembly/asm60/asm60.html](http://www.legis.state.wi.us/assembly/asm60/asm60.html)

*to current law*



State of Wisconsin  
2005 - 2006 LEGISLATURE

3 RHR  
LRB-1764/2

MGG:wlj:pg

(D-N)

Fri 4  
10:00 a.m.

2005 BILL

Regen

1 AN ACT *to repeal* 101.123 (1) (br), 101.123 (1) (c), 101.123 (3) (b), 101.123 (3) (f),  
2 101.123 (4) (a) 1. and 101.123 (4) (a) 3.; *to renumber* 101.123 (1) (a); *to*  
3 *renumber and amend* 101.123 (1) (e), 101.123 (4) (a) 2., 101.123 (4) (am) 1.  
4 and 101.123 (4) (am) 2.; *to consolidate, renumber and amend* 101.123 (4)  
5 (b) and (bm); *to amend* 101.123 (1) (ar), 101.123 (1) (d), 101.123 (1) (f), 101.123  
6 (1) (g), 101.123 (2) (am) 1., 101.123 (2) (am) 2., 101.123 (3) (intro.), 101.123 (3)  
7 (d), 101.123 (4) (c) and 101.123 (4) (d); *to repeal and recreate* 101.123 (2) (a)  
8 1. and 101.123 (2) (a) 5.; and *to create* 101.123 (1) (ac), 101.123 (1) (dj) and  
9 101.123 (4) (aw) of the statutes; **relating to:** indoor places where smoking is  
10 prohibited, designating smoking areas in indoor places where smoking is  
11 generally prohibited, and smoking outside the state capitol building.

---

***Analysis by the Legislative Reference Bureau***

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated a smoking area. This bill limits the areas where any smoking areas may be designated to hospitals where the primary purpose is for treatment of mental illness,

**BILL**

alcoholism, or drug abuse; mental health institutions; centers for the developmentally disabled; prisons; and jails. The locations where smoking areas may no longer be designated under the bill include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Inpatient health care facilities such as community-based residential facilities and licensed nursing homes.
4. Movie theaters.
5. Offices and other places of employment, as described below.
6. Restaurants that have seating capacities of more than 50 persons, except as described below.
7. Retail establishments other than bars and bowling centers.
8. Public waiting rooms.
9. County, city, village, state, and town buildings.

Current law provides exceptions from the prohibition against smoking for rooms in which the main occupants are smokers and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions. This bill also expands the concept of “offices” under current law to include any place of employment. The bill defines “a place of employment” to be any indoor area that employees normally frequent during the course of employment such as a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The definition excludes any private residence unless it is an adult day care center.

Current law allows smoking in any restaurant holding an intoxicating liquor license or beer license issued by a municipality if the sale of alcoholic beverages subject to the license accounts for more than 50 percent of the restaurant’s receipts. The bill increases this percentage to 75 percent.

Current law also allows smoking in any bowling center and any restaurant that has seating for a maximum of 50 persons. Under the bill, all restaurants and bowling centers are covered by the prohibition against smoking.

Current law prohibits any person from smoking at an outside location that within the immediate vicinity of the state capitol building. Current law defines “immediate vicinity” for this purpose to be six feet. The bill changes this distance to 25 feet.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

2           **SECTION 2.** 101.123 (1) (ac) of the statutes is created to read:

**BILL**

1           101.123 (1) (ac) “Adult day care center” means a facility in which services are  
2           provided for part of a day in a group setting to adults who need an enriched  
3           health-supportive or social experience and who may need assistance with activities  
4           of daily living, supervision, or protection.

5           **SECTION 3.** 101.123 (1) (ar) of the statutes is amended to read:

6           101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area  
7           directly adjacent to the state capitol building, as determined by rule of the  
8           department of administration. “Immediate vicinity of the state capitol” does not  
9           include any location that is more than ~~one fathom~~ 25 feet from the state capitol  
10          building.

11          **SECTION 4.** 101.123 (1) (br) of the statutes is repealed.

12          **SECTION 5.** 101.123 (1) (c) of the statutes is repealed.

13          **SECTION 6.** 101.123 (1) (d) of the statutes is amended to read:

14          101.123 (1) (d) “Person in charge” means the person who ultimately controls,  
15          governs or directs the activities ~~aboard a public conveyance or~~ within a place where  
16          smoking is regulated under this section, regardless of the person’s status as owner  
17          or lessee.

18          **SECTION 7.** 101.123 (1) (dj) of the statutes is created to read:

19          101.123 (1) (dj) “Place of employment” means any indoor area that employees  
20          normally frequent during the course of employment, including a work area, an  
21          employee lounge, a restroom, a conference room, a meeting room, a classroom, a  
22          hallway, a vehicle, and or a cafeteria that is provided by the employer. “Place of  
23          employment” does not include a private residence unless it is used as an adult day  
24          care center.

**BILL**

1       **SECTION 8.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and  
2 amended to read:

3       101.123 (1) (cm) ~~“Public conveyance”~~ “Passenger vehicle” means a mass transit  
4 ~~vehieles~~ vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01  
5 (31), and a school buses bus as defined by in s. 340.01 (56).

6       **SECTION 9.** 101.123 (1) (f) of the statutes is amended to read:

7       101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)  
8 ~~with a seating capacity of more than 50 persons.~~

9       **SECTION 10.** 101.123 (1) (g) of the statutes is amended to read:

10       101.123 (1) (g) “Retail establishment” means any store or shop in which retail  
11 sales is the principal business conducted, except a tavern operating under a “Class  
12 B” intoxicating liquor license or Class “B” fermented malt beverages license, ~~and~~  
13 ~~except bowling centers.~~

14       **SECTION 11.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

15       101.123 (2) (a) 1. Passenger vehicles.

16       **SECTION 12.** 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

17       101.123 (2) (a) 5. Places of employment.

18       **SECTION 13.** 101.123 (2) (am) 1. of the statutes is amended to read:

19       101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided  
20 in subd. 2., no person may smoke ~~in a motor bus~~, in a hospital or in a physician’s office.

21       **SECTION 14.** 101.123 (2) (am) 2. of the statutes is amended to read:

22       101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient  
23 of a hospital or unit of a hospital that has as its primary purpose the care and  
24 treatment of mental illness, alcoholism or drug abuse and who has the written



**BILL**

1 permission of a physician may smoke in a room that is designated as a smoking area  
2 under sub. (4) (a) 2.

3 **SECTION 15.** 101.123 (3) (intro.) of the statutes is amended to read:

4 101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does  
5 not apply to any of the following places:

6 **SECTION 16.** 101.123 (3) (b) of the statutes is repealed.

7 **SECTION 17.** 101.123 (3) (d) of the statutes is amended to read:

8 101.123 (3) (d) Restaurants holding a "Class B" intoxicating liquor or Class "B"  
9 fermented malt beverage license if the sale of intoxicating liquors or fermented malt  
10 beverages or both accounts for more than 50% 75% of the restaurant's receipts.

11 **SECTION 18.** 101.123 (3) (f) of the statutes is repealed.

12 **SECTION 19.** 101.123 (4) (a) 1. of the statutes is repealed.

13 **SECTION 20.** 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and  
14 amended to read:

15 101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent  
16 may not designate an entire building as a smoking area or designate any smoking  
17 areas in the state capitol building, in the immediate vicinity of the state capitol, in  
18 a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional  
19 facility, in a motor bus, hospital, or physician's office or on the premises, indoors or  
20 outdoors, of a day care center when children who are receiving day care services are  
21 present, in a residence hall or dormitory that is owned or operated by the Board of  
22 Regents of the University of Wisconsin System or in any location that is 25 feet or  
23 less from such a residence hall or dormitory, except that in a hospital or a unit of a  
24 hospital that has as its primary purpose the care and treatment of mental illness,  
25 alcoholism, or drug abuse a person in charge or his or her agent may designate a

## BILL

1 portion of one or more enclosed rooms with outside ventilation as smoking areas for  
 2 the use of adult patients who have the written permission of a physician. Subject to  
 3 this subdivision and sub. (3) (b), a person in charge or his or her agent may not  
 4 designate an entire room as a smoking area for the purpose of allowing smoking as  
 5 specified in sub. (2) (am) 2.

6 SECTION 21. 101.123 (4) (a) 3. of the statutes is repealed.

7 SECTION 22. 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (as)  
 8 and amended to read:

9 101.123 (4) (as) State institutions. The secretary of health and family services  
 10 or his or her designee agent may designate areas where smoking is permitted in a  
 11 state institution other than a prison, ~~unless a fire marshal, law or resolution~~  
 12 ~~prohibits smoking in the area.~~ The secretary of corrections or his or her designee  
 13 agent may designate areas where smoking is permitted in a prison, ~~unless a fire~~  
 14 ~~marshal, law or resolution prohibits smoking in the area.~~ Either secretary or his or  
 15 her designee agent may designate an entire room as a smoking area in a state  
 16 institution administered by the secretary's department. *The secretary of corrections*  
 17 ~~extension~~

18 SECTION 23. 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar)  
 19 and amended to read:

20 101.123 (4) (ar) Jails; lockup facilities. A person in charge of a jail or lockup  
 21 facility, or his or her agent, may designate areas where smoking is permitted in the  
 22 jail or lockup facility, ~~unless a fire marshal, law or resolution prohibits smoking in~~  
 23 ~~the area.~~ The person in charge or his or her agent may designate an entire room in  
 24 the jail or lockup facility as a smoking area. ~~The~~

SECTION 24. 101.123 (4) (aw) of the statutes is created to read:

*CS 1B*  
 SECTION # . RN; 101.123(4)(am) 3<sup>o</sup>; 100.123 (4) (at) (d)

## BILL

1           101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking  
2 is permitted if a fire marshal, law, or resolution prohibits smoking <sup>in</sup> that area.

3           **SECTION 25.** 101.123 (4) (b) and (bm) of the statutes are consolidated,  
4 renumbered 101.123 (4) (b) and amended to read:

5           101.123 (4) (b) Posting. The person ~~in-charge~~ authorized to designate a  
6 smoking area under par. (a), (ar), or (as), or his or her agent, shall post notice of the  
7 designation of a smoking area in or near the area designated. If an entire room is  
8 designated a smoking area, the person ~~in-charge~~ so authorized, or his or her agent,  
9 shall post notice of the designation conspicuously on or near all entrances to the room  
10 normally used by the public. ~~This paragraph does not apply to a place described in~~  
11 ~~par. (bm). (bm) The person in-charge of a state institution, jail or lockup facility or~~  
12 ~~his or her agent, shall post notice of the designation of a smoking area under par. (am)~~  
13 ~~in or near the area designated. If an entire room is designated a smoking area, the~~  
14 ~~person in-charge or his or her agent shall post notice of the designation conspicuously~~  
15 ~~on or near all normally used entrances to the room. If an entire building in a prison,~~  
16 ~~jail, or lockup facility is designated a smoking area, the person in-charge~~ so  
17 authorized, or his or her agent, shall post notice of the designation on or near all  
18 normally used entrances to the building, but need not post notice of the designation  
19 on or near entrances to rooms within the building.

20           **SECTION 26.** 101.123 (4) (c) of the statutes is amended to read:

21           101.123 (4) (c) Barriers; ventilation. The person ~~in-charge~~ authorized to  
22 designate a smoking area under par. (a), (ar), or (as), or his or her agent, shall utilize,  
23 if possible, existing physical barriers and ventilation systems when designating  
24 smoking areas. This paragraph requires no new construction of physical barriers or  
25 ventilation systems in any building.

# BILL

1        **SECTION 27.** 101.123 (4) (d) of the statutes is amended to read:

2           101.123 (4) (d) Where posting required. This section requires the posting of  
3           signs only in areas where smoking is permitted.

**4 SECTION 28. Effective date.**

5           (1) This act takes effect on the first day of the 7th month beginning after  
6       publication.

7 (END)

already

D. Note

Representative Gottlieb

law

Taverns

~~Taverns~~ are ~~totally~~ exempted from ~~the~~  
§ 101.123 under current ~~law~~ since they are  
excluded from the definition of ~~restaurant~~  
~~in § 101.123~~ See § 101.123 and 254.61(5)@

M66

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

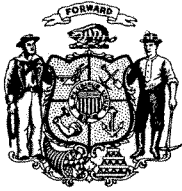
LRB-1764/3dn  
MGG:wlj:pg

April 1, 2005

Representative Gottlieb:

Taverns are already totally exempted from s. 101.123 under current law since they are excluded from the definition of "restaurant." See ss. 101.123 and 254.61 (5).

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1764/A 4  
MGG:wlj.pg

2005 BILL

TODAY  
D-N

Regen

1 AN ACT *to repeal* 101.123 (1) (br), 101.123 (1) (c), 101.123 (3) (b), 101.123 (3) (f),  
2 101.123 (4) (a) 1. and 101.123 (4) (a) 3.; *to renumber* 101.123 (1) (a) and 101.123  
3 (4) (am) 3.; *to renumber and amend* 101.123 (1) (e), 101.123 (4) (a) 2., 101.123  
4 (4) (am) 1. and 101.123 (4) (am) 2.; *to consolidate, renumber and amend*  
5 101.123 (4) (b) and (bm); *to amend* 101.123 (1) (ar), 101.123 (1) (d), 101.123 (1)  
6 (f), 101.123 (1) (g), 101.123 (2) (am) 1., 101.123 (2) (am) 2., 101.123 (3) (intro.),  
7 101.123 (3) (d), 101.123 (4) (c) and 101.123 (4) (d); *to repeal and recreate*  
8 101.123 (2) (a) 1. and 101.123 (2) (a) 5.; and *to create* 101.123 (1) (ac), 101.123  
9 (1) (dj) and 101.123 (4) (aw) of the statutes; **relating to:** indoor places where  
10 smoking is prohibited, designating smoking areas in indoor places where  
11 smoking is generally prohibited, and smoking outside the state capitol  
12 building.

---

*Analysis by the Legislative Reference Bureau*

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated

**BILL**

a smoking area. This bill limits the areas where any smoking areas may be designated to hospitals where the primary purpose is for treatment of mental illness, alcoholism, or drug abuse; mental health institutions; centers for the developmentally disabled; prisons; and jails. The locations where smoking areas may no longer be designated under the bill include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Inpatient health care facilities such as community-based residential facilities and licensed nursing homes.
4. Movie theaters.
5. Offices and other places of employment, as described below.
6. Restaurants that have seating capacities of more than 50 persons, except as described below.
7. Retail establishments other than bars and bowling centers.
8. Public waiting rooms.
9. County, city, village, state, and town buildings.

Current law provides exceptions from the prohibition against smoking for rooms in which the main occupants are smokers and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions. This bill also expands the concept of "offices" under current law to include any place of employment. The bill defines "a place of employment" to be any indoor area that employees normally frequent during the course of employment such as a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The definition excludes any private residence unless it is an adult day care center.

Current law allows smoking in any restaurant holding an intoxicating liquor license or beer license issued by a municipality if the sale of alcoholic beverages subject to the license accounts for more than 50 percent of the restaurant's receipts. The bill increases this percentage to 75 percent.

Current law also allows smoking in any bowling center and any restaurant that has seating for a maximum of 50 persons. Under the bill, all restaurants and bowling centers are covered by the prohibition against smoking.

Current law prohibits any person from smoking at an outside location that within the immediate vicinity of the state capitol building. Current law defines "immediate vicinity" for this purpose to be six feet. The bill changes this distance to 25 feet.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).



## BILL

1           **SECTION 2.** 101.123 (1) (ac) of the statutes is created to read:

2           101.123 (1) (ac) "Adult day care center" means a facility in which services are  
3           provided for part of a day in a group setting to adults who need an enriched  
4           health-supportive or social experience and who may need assistance with activities  
5           of daily living, supervision, or protection.

6           **SECTION 3.** 101.123 (1) (ar) of the statutes is amended to read:

7           101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area  
8           directly adjacent to the state capitol building, as determined by rule of the  
9           department of administration. "Immediate vicinity of the state capitol" does not  
10          include any location that is more than ~~one fathom~~ 25 feet from the state capitol  
11          building.

12          **SECTION 4.** 101.123 (1) (br) of the statutes is repealed.

13          **SECTION 5.** 101.123 (1) (c) of the statutes is repealed.

14          **SECTION 6.** 101.123 (1) (d) of the statutes is amended to read:

15          101.123 (1) (d) "Person in charge" means the person who ultimately controls,  
16          governs or directs the activities ~~aboard a public conveyance or~~ within a place where  
17          smoking is regulated under this section, regardless of the person's status as owner  
18          or lessee.

19          **SECTION 7.** 101.123 (1) (dj) of the statutes is created to read:

20          101.123 (1) (dj) "Place of employment" means any indoor area that employees  
21          normally frequent during the course of employment, including a work area, an  
22          employee lounge, a restroom, a conference room, a meeting room, a classroom, a  
23          hallway, a vehicle, and or a cafeteria that is provided by the employer. "Place of  
24          employment" does not include <sup>any of the following: #1.</sup> a private residence unless it is used as an adult day  
25          care center.

→ #2. A <sup>tavern</sup> operating under a "Class B" <sup>intoxicating</sup> liquor license or a <sup>Class "B"</sup> fermented malt beverage license.

**BILL**

1       **SECTION 8.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and  
2 amended to read:

3       101.123 (1) (cm) ~~“Public conveyance”~~ “Passenger vehicle” means a mass transit  
4 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01  
5 (31), and a school buses bus as defined by in s. 340.01 (56).

6       **SECTION 9.** 101.123 (1) (f) of the statutes is amended to read:

7       101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)  
8 ~~with a seating capacity of more than 50 persons.~~

9       **SECTION 10.** 101.123 (1) (g) of the statutes is amended to read:

10       101.123 (1) (g) “Retail establishment” means any store or shop in which retail  
11 sales is the principal business conducted, except a tavern operating under a “Class  
12 B” intoxicating liquor license or Class “B” fermented malt beverages license, ~~and~~  
13 ~~except bowling centers.~~

14       **SECTION 11.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

15       101.123 (2) (a) 1. Passenger vehicles.

16       **SECTION 12.** 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

17       101.123 (2) (a) 5. Places of employment.

18       **SECTION 13.** 101.123 (2) (am) 1. of the statutes is amended to read:

19       101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided  
20 in subd. 2., no person may smoke ~~in a motor bus~~, in a hospital or in a physician’s office.

21       **SECTION 14.** 101.123 (2) (am) 2. of the statutes is amended to read:

22       101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient  
23 of a hospital or unit of a hospital that has as its primary purpose the care and  
24 treatment of mental illness, alcoholism or drug abuse and who has the written

**BILL**

1 permission of a physician may smoke in a room that is designated as a smoking area  
2 under sub. (4) (a) 2.

3 **SECTION 15.** 101.123 (3) (intro.) of the statutes is amended to read:

4 101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does  
5 not apply to any of the following places:

6 **SECTION 16.** 101.123 (3) (b) of the statutes is repealed.

7 **SECTION 17.** 101.123 (3) (d) of the statutes is amended to read:

8 101.123 (3) (d) Restaurants holding a "Class B" intoxicating liquor or Class "B"  
9 fermented malt beverage license if the sale of intoxicating liquors or fermented malt  
10 beverages or both accounts for more than ~~50%~~ 75 percent of the restaurant's receipts.

11 **SECTION 18.** 101.123 (3) (f) of the statutes is repealed.

12 **SECTION 19.** 101.123 (4) (a) 1. of the statutes is repealed.

13 **SECTION 20.** 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and  
14 amended to read:

15 101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent  
16 may not designate ~~an entire building as a smoking area or designate any smoking~~  
17 ~~areas in the state capitol building, in the immediate vicinity of the state capitol, in~~  
18 ~~a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional~~  
19 ~~facility, in a motor bus, hospital, or physician's office or on the premises, indoors or~~  
20 ~~outdoors, of a day care center when children who are receiving day care services are~~  
21 ~~present, in a residence hall or dormitory that is owned or operated by the Board of~~  
22 ~~Regents of the University of Wisconsin System or in any location that is 25 feet or~~  
23 ~~less from such a residence hall or dormitory, except that in a hospital or a unit of a~~  
24 hospital that has as its primary purpose the care and treatment of mental illness,  
25 alcoholism, or drug abuse a person in charge or his or her agent may designate a

101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent may not designate a smoking area or designate any smoking areas in the state capitol building, in the immediate vicinity of the state capitol, in a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional facility, in a motor bus, hospital, or physician's office or on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present, in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory, except that in a hospital or a unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism, or drug abuse a person in charge or his or her agent may designate a

**BILL**

1 ~~portion of one or more enclosed rooms with outside ventilation as smoking areas for~~  
2 ~~the use of adult patients who have the written permission of a physician. Subject to~~  
3 ~~this subdivision and sub. (3) (b), a person in charge or his or her agent may not~~  
4 ~~designate an entire room as a smoking area for the purpose of allowing smoking as~~  
5 ~~specified in sub. (2) (am) 2.~~

6 **SECTION 21.** 101.123 (4) (a) 3. of the statutes is repealed.

7 **SECTION 22.** 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (as)  
8 and amended to read:

9 101.123 (4) (as) State institutions. The secretary of health and family services  
10 or his or her ~~designee~~ agent may designate areas where smoking is permitted in a  
11 state institution other than a prison, ~~unless a fire marshal, law or resolution~~  
12 ~~prohibits smoking in the area.~~ The secretary of corrections or his or her ~~designee~~  
13 agent may designate areas where smoking is permitted in a prison, ~~unless a fire~~  
14 ~~marshal, law or resolution prohibits smoking in the area.~~ Either secretary or his or  
15 her ~~designee~~ agent may designate an entire room as a smoking area in a state  
16 institution administered by the secretary's department.

17 **SECTION 23.** 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar)  
18 and amended to read:

19 101.123 (4) (ar) Jails; lockup facilities. A person in charge of a jail or lockup  
20 facility, or his or her agent, may designate areas where smoking is permitted in the  
21 jail or lockup facility, ~~unless a fire marshal, law or resolution prohibits smoking in~~  
22 ~~the area.~~ The person in charge or his or her agent may designate an entire room in  
23 the jail or lockup facility as a smoking area.

24 **SECTION 24.** 101.123 (4) (am) 3. of the statutes is renumbered 100.123 (4) (at).

25 **SECTION 25.** 101.123 (4) (aw) of the statutes is created to read:

**BILL**

1           101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking  
2 is permitted if a fire marshal, law, or resolution prohibits smoking in that area.

3           **SECTION 26.** 101.123 (4) (b) and (bm) of the statutes are consolidated,  
4 renumbered 101.123 (4) (b) and amended to read:

5           101.123 (4) (b) *Posting.* The person in-charge authorized to designate a  
6 smoking area under par. (a), (ar), or (as), or his or her agent, shall post notice of the  
7 designation of a smoking area in or near the area designated. If an entire room is  
8 designated a smoking area, the person in-charge so authorized, or his or her agent,  
9 shall post notice of the designation conspicuously on or near all entrances to the room  
10 normally used by the public. ~~This paragraph does not apply to a place described in~~  
11 ~~par. (bm).~~ (bm) The person in charge of a state institution, jail or lockup facility or  
12 his or her agent, shall post notice of the designation of a smoking area under par. (am)  
13 in or near the area designated. If an entire room is designated a smoking area, the  
14 person in charge or his or her agent shall post notice of the designation conspicuously  
15 on or near all normally used entrances to the room. If an entire building in a prison,  
16 jail, or lockup facility is designated a smoking area, the person in-charge so  
17 authorized, or his or her agent, shall post notice of the designation on or near all  
18 normally used entrances to the building, but need not post notice of the designation  
19 on or near entrances to rooms within the building.

20           **SECTION 27.** 101.123 (4) (c) of the statutes is amended to read:

21           101.123 (4) (c) *Barriers; ventilation.* The person in-charge authorized to  
22 designate a smoking area under par. (a), (ar), or (as), or his or her agent, shall utilize,  
23 if possible, existing physical barriers and ventilation systems when designating  
24 smoking areas. This paragraph requires no new construction of physical barriers or  
25 ventilation systems in any building.

# BILL

**SECTION 28.** 101.123 (4) (d) of the statutes is amended to read:

101.123 (4) (d) Where posting required. This section requires the posting of signs only in areas where smoking is permitted.

**SECTION 29. Effective date.**

(1) This act takes effect on the first day of the 7th month beginning after publication.

(END)

d-note  
↓

Representative Gottlieb:

I put the <sup>provision</sup> ~~provision~~ <sup>exempting</sup> ~~for~~ taverns  
from ~~the~~ "places of employment" in the  
definition of "place of employment" to  
be consistent with how this <sup>is</sup> addressed  
for "retail establishments" See S. 101.123(1)(g) 10

MGL

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1764/4dn  
MGG:wlj:pg

April 1, 2005

Representative Gottlieb:

I put the provision exempting taverns from "places of employment" in the definition of "place of employment" to be consistent with how this is addressed for "retail establishments." See s. 101.123 (1) (g).

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215



Thurs

2005

# 2005 BILL

Regen

1 AN ACT *to repeal* 101.123 (1) (br), 101.123 (1) (c), 101.123 (3) (b), 101.123 (3) (f),  
 2 101.123 (4) (a) 1. and 101.123 (4) (a) 3.; *to renumber* 101.123 (1) (a) and 101.123  
 3 (4) (am) 3.; *to renumber and amend* 101.123 (1) (e), 101.123 (4) (a) 2., 101.123  
 4 (4) (am) 1. and 101.123 (4) (am) 2.; *to consolidate, renumber and amend*  
 5 101.123 (4) (b) and (bm); *to amend* 101.123 (1) (ar), 101.123 (1) (d), 101.123 (1)  
 6 (f), 101.123 (1) (g), 101.123 (2) (am) 1., 101.123 (2) (am) 2., 101.123 (3) (intro.),  
 7 101.123 (3) (d), 101.123 (4) (c) and 101.123 (4) (d); *to repeal and recreate*  
 8 101.123 (2) (a) 1. and 101.123 (2) (a) 5.; and *to create* 101.123 (1) (ac), 101.123  
 9 (1) (dj) and 101.123 (4) (aw) of the statutes; **relating to:** indoor places where  
 10 smoking is prohibited, designating smoking areas in indoor places where  
 11 smoking is generally prohibited, and smoking outside the state capitol  
 12 building.

## *Analysis by the Legislative Reference Bureau*

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated

**BILL**

a smoking area. This bill limits the areas where any smoking areas may be designated to hospitals where the primary purpose is for treatment of mental illness, alcoholism, or drug abuse; mental health institutions; centers for the developmentally disabled; prisons; and jails. The locations where smoking areas may no longer be designated under the bill include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Inpatient health care facilities such as community-based residential facilities and licensed nursing homes.
4. Movie theaters.
5. Offices and other places of employment, as described below.
6. Restaurants that have seating capacities of more than 50 persons, except as described below.
7. Retail establishments other than bars and bowling centers.
8. Public waiting rooms.
9. County, city, village, state, and town buildings.

Current law provides exceptions from the prohibition against smoking for rooms in which the main occupants are smokers and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions. This bill also expands the concept of "offices" under current law to include any place of employment. The bill defines "a place of employment" to be any indoor area that employees normally frequent during the course of employment such as a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The definition excludes any private residence unless it is an adult day care center.

Current law allows smoking in any restaurant holding an intoxicating liquor license or beer license issued by a municipality if the sale of alcoholic beverages subject to the license accounts for more than 50 percent of the restaurant's receipts. The bill increases this percentage to 75 percent.

Current law also allows smoking in any bowling center and any restaurant that has seating for a maximum of 50 persons. Under the bill, all restaurants and bowling centers are covered by the prohibition against smoking.

Current law prohibits any person from smoking at an outside location that within the immediate vicinity of the state capitol building. Current law defines "immediate vicinity" for this purpose to be six feet. The bill changes this distance to 25 feet.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1      **SECTION 1.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

*(No)* This bill eliminates the capacity requirement for restaurants and prohibits smoking in bowling centers

*and applies this provision to all businesses operating under one of these licenses*

**BILL**

1           **SECTION 2.** 101.123 (1) (ac) of the statutes is created to read:

2           101.123 (1) (ac) "Adult day care center" means a facility in which services are  
3           provided for part of a day in a group setting to adults who need an enriched  
4           health-supportive or social experience and who may need assistance with activities  
5           of daily living, supervision, or protection.

6           **SECTION 3.** 101.123 (1) (ar) of the statutes is amended to read:

7           101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area  
8           directly adjacent to the state capitol building, as determined by rule of the  
9           department of administration. "Immediate vicinity of the state capitol" does not  
10          include any location that is more than ~~one fathom~~ 25 feet from the state capitol  
11          building.

12          **SECTION 4.** 101.123 (1) (br) of the statutes is repealed.

13          **SECTION 5.** 101.123 (1) (c) of the statutes is repealed.

14          **SECTION 6.** 101.123 (1) (d) of the statutes is amended to read:

15          101.123 (1) (d) "Person in charge" means the person who ultimately controls,  
16          governs or directs the activities ~~aboard a public conveyance or~~ within a place where  
17          smoking is regulated under this section, regardless of the person's status as owner  
18          or lessee.

19          **SECTION 7.** 101.123 (1) (dj) of the statutes is created to read:

20          101.123 (1) (dj) "Place of employment" means any indoor area that employees  
21          normally frequent during the course of employment, including a work area, an  
22          employee lounge, a restroom, a conference room, a meeting room, a classroom, a  
23          hallway, a vehicle, and or a cafeteria that is provided by the employer. "Place of  
24          employment" does not include any of the following:

25               1. A private residence unless it is used as an adult day care center.

## BILL

*business  
establishment*

*LPS: Please do  
not score the  
inserted text  
@ 4-2*

1 2. A ~~tavern~~ operating under a "Class B" intoxicating liquor license or a Class  
2 "B" fermented malt beverage license *If the sale of intoxicating liquors or  
fermented malt beverages or both accounts*

3 SECTION 8. 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and *for*  
4 amended to read: *more*

5 101.123 (1) (cm) "~~Public conveyance~~" "Passenger vehicle" means a mass transit *75*  
6 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01 *percent*  
7 (31), and a school buses bus as defined by in s. 340.01 (56). *of the*  
*business*

8 SECTION 9. 101.123 (1) (f) of the statutes is amended to read:

9 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)  
10 with a seating capacity of more than 50 persons. *receipts*

11 SECTION 10. 101.123 (1) (g) of the statutes is amended to read:

12 101.123 (1) (g) "Retail establishment" means any store or shop in which retail  
13 sales is the principal business conducted, except a ~~tavern~~ *strike* *business* operating under a "Class  
14 B" intoxicating liquor license or Class "B" fermented malt beverages license, and  
15 except bowling centers. *LPS: Please score the inserted  
text @ 415.*

16 SECTION 11. 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

17 101.123 (2) (a) 1. Passenger vehicles.

18 SECTION 12. 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

19 101.123 (2) (a) 5. Places of employment.

20 SECTION 13. 101.123 (2) (am) 1. of the statutes is amended to read:

21 101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided  
22 in subd. 2., no person may smoke ~~in a motor bus~~, in a hospital or in a physician's office.

23 SECTION 14. 101.123 (2) (am) 2. of the statutes is amended to read:

24 101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient  
25 of a hospital or unit of a hospital that has as its primary purpose the care and

**BILL**

1 treatment of mental illness, alcoholism or drug abuse and who has the written  
2 permission of a physician may smoke in a room that is designated as a smoking area  
3 under sub. (4) (a) 2.

4 **SECTION 15.** 101.123 (3) (intro.) of the statutes is amended to read:

5 101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does  
6 not apply to any of the following places:

7 **SECTION 16.** 101.123 (3) (b) of the statutes is repealed.

8 **SECTION 17.** 101.123 (3) (d) of the statutes is amended to read:

9 101.123 (3) (d) Restaurants holding a "Class B" intoxicating liquor or Class "B"  
10 fermented malt beverage license if the sale of intoxicating liquors or fermented malt  
11 beverages or both accounts for more than ~~50%~~ 75 percent of the restaurant's receipts.

12 **SECTION 18.** 101.123 (3) (f) of the statutes is repealed.

13 **SECTION 19.** 101.123 (4) (a) 1. of the statutes is repealed.

14 **SECTION 20.** 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and  
15 amended to read:

16 101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent  
17 may not designate ~~an entire building as a smoking area or designate any smoking~~  
18 ~~areas in the state capitol building, in the immediate vicinity of the state capitol, in~~  
19 ~~a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional~~  
20 ~~facility, in a motor bus, hospital, or physician's office or on the premises, indoors or~~  
21 ~~outdoors, of a day care center when children who are receiving day care services are~~  
22 ~~present, in a residence hall or dormitory that is owned or operated by the Board of~~  
23 ~~Regents of the University of Wisconsin System or in any location that is 25 feet or~~  
24 ~~less from such a residence hall or dormitory, except that in a hospital or a unit of a~~  
25 hospital that has as its primary purpose the care and treatment of mental illness,

## BILL

## SECTION 20

1 alcoholism, or drug abuse a person in charge or his or her agent may designate a  
2 portion of one or more enclosed rooms with outside ventilation as smoking areas for  
3 the use of adult patients who have the written permission of a physician. Subject to  
4 this subdivision and sub. (3) (b), a person in charge or his or her agent may not  
5 designate an entire room as a smoking area for the purpose of allowing smoking as  
6 specified in sub. (2) (am) 2.

7 SECTION 21. 101.123 (4) (a) 3. of the statutes is repealed.

8 SECTION 22. 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (as)  
9 and amended to read:

10 101.123 (4) (as) State institutions. The secretary of health and family services  
11 or his or her designee agent may designate areas where smoking is permitted in a  
12 state institution other than a prison, ~~unless a fire marshal, law or resolution~~  
13 ~~prohibits smoking in the area.~~ The secretary of corrections or his or her designee  
14 agent may designate areas where smoking is permitted in a prison, ~~unless a fire~~  
15 ~~marshal, law or resolution prohibits smoking in the area.~~ Either secretary or his or  
16 her designee agent may designate an entire room as a smoking area in a state  
17 institution administered by the secretary's department.

18 SECTION 23. 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar)  
19 and amended to read:

20 101.123 (4) (ar) Jails; lockup facilities. A person in charge of a jail or lockup  
21 facility, or his or her agent, may designate areas where smoking is permitted in the  
22 jail or lockup facility, ~~unless a fire marshal, law or resolution prohibits smoking in~~  
23 ~~the area.~~ The person in charge or his or her agent may designate an entire room in  
24 the jail or lockup facility as a smoking area.

25 SECTION 24. 101.123 (4) (am) 3. of the statutes is renumbered 100.123 (4) (at).

**BILL**

1           **SECTION 25.** 101.123 (4) (aw) of the statutes is created to read:

2           101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking  
3 is permitted if a fire marshal, law, or resolution prohibits smoking in that area.

4           **SECTION 26.** 101.123 (4) (b) and (bm) of the statutes are consolidated,  
5 renumbered 101.123 (4) (b) and amended to read:

6           101.123 (4) (b) Posting. The person in-charge authorized to designate a  
7 smoking area under par. (a), (ar), or (as), or his or her agent, shall post notice of the  
8 designation of a smoking area in or near the area designated. If an entire room is  
9 designated a smoking area, the person in-charge so authorized, or his or her agent,  
10 shall post notice of the designation conspicuously on or near all entrances to the room  
11 normally used by the public. ~~This paragraph does not apply to a place described in~~  
12 ~~par. (bm). (bm) The person in charge of a state institution, jail or lockup facility or~~  
13 ~~his or her agent, shall post notice of the designation of a smoking area under par. (am)~~  
14 ~~in or near the area designated. If an entire room is designated a smoking area, the~~  
15 ~~person in charge or his or her agent shall post notice of the designation conspicuously~~  
16 ~~on or near all normally used entrances to the room. If an entire building in a prison,~~  
17 ~~jail, or lockup facility is designated a smoking area, the person in-charge so~~  
18 authorized, or his or her agent, shall post notice of the designation on or near all  
19 normally used entrances to the building, but need not post notice of the designation  
20 on or near entrances to rooms within the building.

21           **SECTION 27.** 101.123 (4) (c) of the statutes is amended to read:

22           101.123 (4) (c) Barriers; ventilation. The person in-charge authorized to  
23 designate a smoking area under par. (a), (ar), or (as), or his or her agent, shall utilize,  
24 if possible, existing physical barriers and ventilation systems when designating

**BILL****SECTION 27**

1 smoking areas. This paragraph requires no new construction of physical barriers or  
2 ventilation systems in any building.

3 **SECTION 28.** 101.123 (4) (d) of the statutes is amended to read:

4 101.123 (4) (d) Where posting required. This section requires the posting of  
5 signs only in areas where smoking is permitted.

6 **SECTION 29. Effective date.**

7 (1) This act takes effect on the first day of the 7th month beginning after  
8 publication.

9 **(END)**



**Northrop, Lori**

---

**From:** Paulson, Darcy  
**Sent:** Friday, April 22, 2005 10:56 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1764/5 Topic: Changes to clean indoor air law

It has been requested by <Paulson, Darcy> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1764/5 Topic: Changes to clean indoor air law